87-1710

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

BARBARA J. BRANSON,

Appellant

v.

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION; ERNEST E. GOODMAN; H. KEITH ABBOTT; JOHN C. BOLLENS; GEORGE S. NOJIMA; TOM SALATA; CECILIA M. SANDOVAL; LOS ANGELES COUNTY BOARD OF SUPERVISORS; MICHAEL D. ANTONOVICH; DEANE DANA; PETER SCHABARUM; KENNETH HAHN; EDMUND EDELMAN; LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE; ROBERT H. PHILIBOSIAN; JAMES A. BASCUE; BILLY D. WEBB; LOS ANGELES COUNTY COUNSEL; DE WITT W. CLINTON; JOE BEN HUDGENS,

Appellees

ON APPEAL FROM THE

COURT OF APPEAL, STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JURISDICTIONAL STATEMENT

BARBARA J. BRANSON
Appellant in Pro Per
7131 Owensmouth Avenue
#D110
Canoga Park CA 91303
No phone

APRIL 15, 1988

96pp

QUESTIONS PRESENTED

. Is Los Angeles County Civil Service Rule 18.03 repugnant to the United states Constitution as it was applied, by acts of omission, to appellant?

. Is Los Angeles County Civil Service Rule 4.03(a) repugnant to the United States Constitution on its face and as applied to appellant?

* * *

OTE: 28 U.S.C. §2403(b) may be applicable and this document is served upon the State Attorney General.
[Supreme Court Rule 28.4(c)]

LIST OF PARTIES

LOS ANGELES COUNTY CIVIL SERVICE COMMISSION;

ERNEST E. GOODMAN, Civil Service Commissioner

H. KEITH ABBOTT, Civil Service Commissioner

JOHN C. BOLLENS, Civil Service Commissioner

GEORGE S. NOJIMA, Civil Service Commissioner

TOM SALATA, Civil Service Commissioner

CECILIA M. SANDOVAL, Civil Service Comm'r

LOS ANGELES COUNTY BOARD OF SUPERVISORS;

MICHAEL D. ANTONOVICH, County Supervisor

DEANE DANA, County Supervisor

PETER SCHABARUM, County Supervisor

KENNETH HAHN, County Supervisor

EDMUND EDELMAN, County Supervisor

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ROBERT H. PHILIBOSIAN, then-District Attorney

JAMES A. BASCUE, then-Chief Deputy Dist. Att.

BILLY D. WEBB, then-Director, Branch & Area Operations Bureau, District Attorney

LOS ANGELES COUNTY COUNSEL;

DE WITT W. CLINTON, County Counsel

JOE BEN HUDGENS, Deputy County Counsel

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* * *

IN THE SUPREME COURT OF THE UNITED STATES

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BARBARA J. BRANSON,

Appellant

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LOS ANGELES COUNTY CIVIL SERVICE COMMISSION; ERNEST E. GOODMAN; H. KEITH ABBOTT; JOHN C. BOLLENS; GEORGE S. NOJIMA; TOM SALATA; CECILIA M. SANDOVAL; LOS ANGELES COUNTY BOARD OF SUPERVISORS; MICHAEL D. ANTONOVICH; DEANE DANA; PETER SCHABARUM; KENNETH HAHN; EDMUND EDELMAN; LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE; ROBERT H. PHILIBOSIAN; JAMES A. BASCUE; BILLY D. WEBB; LOS ANGELES COUNTY COUNSEL; DE WITT W. CLINTON; JOE BEN HUDGENS,

Appellees

ON APPEAL FROM THE

COURT OF APPEAL, STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion below is an untitled and unpublished opinion of the Court of Appeal,

State of California, Second Appellate District, Division Five, authored by Justice Boren, and concurred by Presiding Justice Feinerman and Justice Hastings, affirming the judgment against appellant by the Superior Court of the State of California for the County of Los Angeles. [Appendix A]

JURISDICTION

The nature of the proceeding herein is the summary discharge of appellant from permanent civil service employment by the County of Los Angeles on the charges of "excessive and unauthorized absenteeism", without granting appellant an opportunity for a hearing on those charges; and appellant's extensive administrative review of that decision in the California courts.

The opinion of the Court of Appeal, affirming the judgment below, was filed on October 26, 1987. [Appendix A] A timely petition for rehearing was denied on

November 23, 1987 [Appendix B] and a timely petition for review to the California Supreme Court was denied January 20, 1988. [Appendix C]

Notice of Appeal to this Court was timely filed on January 25, 1988, in the California Court of Appeal, and a copy thereof filed in Los Angeles County Superior Court on March 21, 1988. [Appendix D].

Appellant seeks review by appeal to this Court pursuant to Title 28 U.S.C. §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant portions of the following provisions are quoted in Appendix E:

Fifth Amendment, U.S. Constitution

Fourteenth Amendment, U.S. Constitution

Los Angeles County Civil Service Rule 4.03(a)

Los Angeles County Civil Service Rule 4.03(b)

Los Angeles County Civil Service Rule 18.03

STATEMENT OF THE CASE

Introduction

Appellant was discharged from permanent civil service employment by the County of Los Angeles on December 30, 1983, on the charge of "Excessive and unauthorized absenteeism". According to Los Angeles County Civil Service Rule 2.19, "Discharge means separation from service for cause."

In accordance with Skelly v. State Personnel Board, 15 Cal.3d 194, 124 Cal.Rptr.14, 539 P.2d 774 (1975), a pre-termination hearing was held by the appointing power (James A. Bascue of the District Attorney's Office, appellant's employing department of the County) on November 29, 1983, at which time the department's charge of "excessive and unauthorized absenteeism" was discussed from the perspective of each side.

Despite appellant's denial and rebuttal of the alleged charges, Mr. Bascue invoked the discharge on December 30, 1983, and appellant timely demanded a post-termination hearing before the Civil Service Commission in accordance with her substantive liberty interest in the retention of her employment absent sufficient cause,[1] which conferred on appellant a legitimate claim of entitlement constituting a property interest under the Fifth (through the Fourteenth) Amendment of the United States Constitution.[2,3]

1. See Arnett v. Kennedy, (1974) 416 U.S. 134, 151-152.

2. Appellee was a nonprobationary federal employee, and as such he could be discharged only for "cause". .... The federal statute guaranteeing appellee continued employment absent "cause" for discharge conferred on him a legitimate claim of entitlement which constituted a "property" interest under the Fifth Amendment. Id. 416 U.S. at 166.

3. [T]he California statutory scheme regulating civil service employment confers upon an individual who achieves the status of "permanent employee" a property interest in the continuation of his employment which is protected by due process. Skelly v. State

However, the Civil Service Commission denied the post-termination evidentiary hearing to which appellant was entitled by law.[4,5,6]

Personnel Board (1975) 15 Cal.3d 194, 206, 124 Cal. Rptr. 14, 539 P.2d 774.

In the absence of sufficient cause, the permanent employee has a statutory right to continued employment free of these punitive measures. This statutory right constitutes "a legitimate claim of entitlement" to a government benefit within the meaning of Roth. Therefore, the state must comply with procedural due process requirements before it may deprive its permanent employee of this property interest by punitive action. Id. 15 Cal.3d at 207-208.

4. In Arnett v. Kennedy [supra] we sustained the validity of procedures by which a federal employee could be dismissed for cause. They included notice of the action sought, a copy of the charge, reasonable time for filing a written response, and an opportunity for an oral appearance. Following dismissal an evidentiary hearing was provided. Mathews v. Eldridge (1975) 424 U.S. 319, 334.

5. In Arnett, the remaining six justices were of the opinion that a full evidentiary "hearing must be held at some time before a competitive civil service employee may be finally terminated for misconduct." (citations) Skelly v. State Personnel Board, supra, 15 Cal.3d at 212.

6. It is clear from the lengthy discussion in Skelly v. State Personnel Board [citation] that, as a minimum, a permanent employee is entitled, under due process requirements, to a notice of the action, and a hearing before an impartial official, with the right to appear personally, to confront and examine adverse

1. Los Angeles County Civil Service Rule 18.03

Rule 18.03 states: "Hearing on Reasons for Discharge or Reduction. If the permanent employee to be discharged or reduced pursuant to Rule 18.02 so requests, the Commission shall proceed in accordance with Rule 4.06. A public hearing pursuant to Rule 4 shall be held by the Commission or by the Hearing Board." [emphasis added]

Rule 18.03 is a mandatory statute which creates an expectancy that a hearing on the reasons for discharge will be held by the Commission or the Hearing Board.[7] Thus, the County of Los Angeles has created a substan-

witnesses, to present favorable evidence, and to be represented by counsel. Those requirements, based on both the state and federal Constitutions, make such a hearing a matter required by law, within the meaning of subdivision (a) of section 1094.5 [Calif. Code of Civil Procedure].
L.A.C.E.A. v. Sanitation Dist. (1979) 89 Cal.App.3d 294, 299, 152 Cal.Rptr. 415.

7. A mandatory statute expressly stating that a specific act "shall" be performed creates an expectancy

tive liberty interest which is constitutionally protected.[8] Not only did appellant have a statutory expectancy that she not be discharged except for cause (Civil Service Rule 2.19, supra),[9] but she also had a statutory expectancy of the procedure that would be used to determine that cause. (Civil Service Rule 18.03). This Court has stated that the two rights cannot be considered separately.[10]

that such will be done, and hence, "is entitled to some measure of constitutional protection." See Connecticut Board of Pardons v. Dumschat (1981) 452 U.S. 458, 466.

8. [W]e are persuaded that the repeated use of explicitly mandatory language ["shall", "will", or "must"] in connection with requiring specific substantive predicates demands a conclusion that the State has created a protected liberty interest. Hewitt v. Helms (1983) 459 U.S. 460, 472.

9. Here, appellee did have a statutory expectancy that he not be removed other for "such cause as will promote the efficiency of [the] service." Arnett v. Kennedy, supra, 416 U.S. 134, 151-152.

10. [W]e decline to conclude that the substantive right may be viewed wholly apart from the procedure provided for its enforcement. The employee's statutorily defined right is not a guarantee against removal without cause in the abstract, but such a guarantee as enforced by the procedures which Congress

Appellant first brought Rule 18.03 to the attention of the Commission in her Memorandum of Points and Authorities in Support of Objections dated February 3, 1984 [11] in response to a spokesman for the Commission stating at its February 1, 1984 meeting, when denying appellant a hearing on her discharge, that they could offer no remedy. Appellant quoted Civil Service Rule 18.02 as well as Rule 18.03 under her first point "Remedy is Available". [12]

At no time in the four years appellant has been seeking an administrative remedy in this case, has the County or any court

has designated for the determination of cause. Arnett v. Kennedy, supra, 416 U.S. at 152.

11. See Clerk's Transcript filed 7/17/85, L.A. Superior Court, Case No. C492725, pp 143-144.

12. "1. REMEDY IS AVAILABLE. The Commission erred when it stated that it cannot provide a remedy to petitioner in this case. A full program for administrative remedy is provided in the County Code." (quoting Civil Service Rule 18.02 and Rule 18.03) [Clk's Trns 7/17/85 pp 143-144]

addressed Rule 18.03.

Appellant then raised the issue in her Petition for Peremptory Writ of Administrative Mandamus filed April 2, 1984, with the Superior Court [13] and orally argued the issue in court.[14] Neither the County nor

13. "Petitioner requests that judicial notice be taken of the Los Angeles County Civil Service Rules which mandate a full evidentiary hearing upon request for discharged employees, quoting pertinent portions thereof: [among which is Rule 18.03]" [Clerk's Trans. 7/17/85 pp 8,9,10]

"That respondent Commission had the clear, present, and ministerial duty to grant petitioner a full evidentiary hearing pursuant to Rule 4.03(a), Rule 4.06, Rule 4.07, and Rule 18.03 of the Los Angeles County Civil Service Rules;.... That such duty is entirely mandatory and ministerial in nature-- not involving discretionary acts; that petitioner is entitled to have the Rules strictly enforced and followed...."
[Clerk's Trans. 7/17/85 pp 11,12]

14. MS. BRANSON: ... Rule 18.03 states that upon request, a hearing shall be granted and shall proceed pursuant to Rule 4.06, which describes the method of setting up your hearing board. 4.06 says the hearing shall be held before the Commission or hearing board, and I believe that's the section that says a public hearing. No, that's 18.03 that says a public hearing shall be granted by the Commission upon request of the discharged employee. That is Rule 18.03 for the record. That has no qualifying features of it, sufficient facts, insufficient facts, or anything. [Clerk's Trans. filed 2/20/87 p.278].

the court addressed the matter. The court ignored appellant's Rebuttal to Respondent's Untimely Answer, wherein on page 5 appellant brings up the fraud in evading that responsibility.[15]

Rule 18.03 was discussed in appellant's Motion to Vacate filed March 22, 1985 in Superior Court.[16]

15. Respondents argue in their points and authorities No.2 their right of discretion to deny a hearing under Rule 4.03(a) of the Los Angeles County Civil Service Rules. This is but a smokescreen to elude the truth and to draw the Court's attention away from their responsibilities set forth in Rule 18.03, which Rule they deny, and seek to strain an issue under 4.03(a). They attempt to justify their action as discretionary and duty related in order to escape the attachment of personal liability. Rule 18.03 sweeps away their entire defense, and clearly sets forth the truth for all to see: (Rule 18.03 quoted). [Clerk's Trans. 7/17/85 p.376]

16. Petitioner preliminarily requests the following of this court before proceeding on the motion itself: ...¶ ¶(2) That this court be thoroughly familiar with the law on discharges for cause, including, but not limited to, the Los Angeles County Civil Service Rules as they pertain thereto, particularly ... Rule 18.03 on discharge; [Clerk's Trans. 7/17/85 pp 476-477]

Petitioner requests this court to specifically rule on the following legal contentions:

Rule 18.03 was part of appellant's first appeal to the California Court of Appeal, in Case No. B014099, in her Opening Brief [17] and

...¶ ¶ (43) Petitioner was entitled to a full hearing on the charges at her request pursuant to Civil Service Rule 18.03. ... ¶ ¶ Petitioner specifically requests that, in ruling upon these contentions, if any of them are denied in whole or in part, some legal justification be cited to support such denial or disagreement. Any denials, disagreements, and/or disregarding of any of these contentions by this court, without support by the evidence, are hereby objected to by petitioner, and petitioner accordingly assigns them as exceptions for further review. [Clerk's Trans 7/17/85 pp 480, 485-486, 490]

Pursuant to Civil Service Rule 18.03 and case law on the subject, all that is required of petitioner to receive her lawful evidentiary hearing to determine the cause of discharge is a timely request therefor in the manner provided. It is not necessary for petitioner to prove a "meritorious defense" or to show "sufficient facts and reasons" prior to a full evidentiary hearing. A careful reading of Civil Service Rule 4.03(a) will show that the phrase "sufficient specific facts and reasons" relates to Rule 18.02 which states that such facts and reasons must first have been presented to the appointing power for consideration if it was possible to do so. Any other interpretation of Rule 4.03(a) would not only be in direct conflict with Rule 18.03, but with established case law, state and federal, on the subject of "discharge for cause" and would be unconstitutional. [Clerk's Trans 7/17/85 pp 548-549].

17. Rule 18.03 has been ignored by respondents and the court. Civil Service Rule 18.03 speaks very clearly about the absolute right to a hearing upon request of a discharged employee. Appellant requested

Reply Brief. [18] It was still unaddressed. After the first appeal was denied, appellant had to revive the case with another motion filed August 20, 1986 (briefly called "Motion to Clarify"). Rule 18.03 was brought up in appellant's Supplement to Motion to Clarify filed September 30, 1986 in Superior Court, Case C492725, as the

Judge Epstein to take judicial notice of that rule [CT 10] and she stated in the petition that the hearing is mandatory upon timely request under that rule. [CT 12/23-24]. Appellant also brought Rule 18.03 to Judge Epstein's attention in court [CT 365/2-11]; yet neither the judge nor respondents have ever addressed Rule 18.03 throughout this case. [Appellant's Opening Brief, B014099, p.55]

18. Failure to Address Rule 18.03. The second subissue under the general hearing issue states that Civil Service Rule 18.03 has been ignored by respondents and the court throughout these proceedings. (AOB 55). Respondents have still failed to address this issue. Rule 18.03 accords a discharged permanent employee a full hearing on the cause of discharge as a matter of right upon a timely demand therefor. This rule is in accord with the Curphey case, the sole case cited by respondents and relied upon as authority. Therefore, it must be conceded that respondents failed to grant appellant the full evidentiary hearing timely requested by her, as shown by the record. [Appellant's Reply Brief p.5]

ninth ground upon which the Motion to Clarify was to be based.[19] Appellant also stated the fact that Rule 18.03 had not been addressed by any court or any party since the filing of the Petition for a Peremptory Writ of Administrative Mandamus on April 2, 1984, until the date of the declaration then being made which was September 29, 1986.[20]

19. In addition to the eight grounds listed upon which this motion will be based, said motion will be made also on the following ground: ¶ 9. That respondents and real parties in interest have violated Civil Service Rule 18.03 mandating that a full evidentiary hearing on petitioner's discharge for cause be commenced upon petitioner's timely request therefor; and further that all parties and all courts have failed and refused to address the violation of Civil Service Rule 18.03 herein, despite petitioner's demands that they do so. [Clerk's Trans. filed 2/20/87 Case No. C492725, p.297]

20. I, BARBARA J. BRANSON, declare as follows: That I am petitioner, in propria persona status under objection. I have requested that judicial notice be taken of Civil Service Rule 18.03, fully quoted on page 9 of my petition filed herein on April 2, 1984. That I have orally argued Rule 18.03 at the hearing on said petition. ... At no time has any party or court responded to or addressed said rule and it remains unaddressed to this day. [Clerk's Trans. 2/20/87 p.298].

Appellant again requested judicial notice be taken of Rule 18.03 and the fact that it had never been addressed by any court or any party to date (November 1, 1986) in her Brief in Opposition to Proposed Judgment, filed November 3, 1986.[21] That, too, was ignored.

And finally, Rule 18.03 was brought as a Constitutional challenge in appellant's second appeal to the California Court of Appeal, in Case No. B024959. Despite the fact that Rule 18.03 was challenged in appellant's Opening Brief,[22] in the Petition

21. See Clerk's Trans. 2/20/87 pp 485, 489

22. 5. Appellant challenges the constitutionality of Los Angeles County Civil Service Rule 18.03 as applied to her by acts of omission of the Civil Service Commission and the courts handling this case. (followed by quoting Rule 18.03 and Rule 4.06)
The word "shall" used in Rule 18.03 and Rule 4.06 (to which 18.03 refers) indicates that those rules are mandatory, and disobedience to mandatory rules are actionable under California Government Code section 815.6. Furthermore, Section 44 of the Los Angeles County Charter states that any person willfully violating the Civil Service Rules shall be guilty of a misdemeanor. [CT#1 pp 571-572]. Appellant brought Rule 18.03 to Judge Epstein's attention in court [CT#2 278/2-11]; yet, neither the judge nor respondent has ever addressed Rule 18.03 throughout

for Rehearing,[23] and the Petition for Review

these proceedings. This brings to question respondent's good faith reliance on Rule 4.03(a) to uphold appellant's discharge without a hearing, while making a conscious effort to ignore Rule 18.03 throughout these proceedings. Furthermore, it emphasizes the collusion that exists between respondent and the courts, because the courts have equally ignored this rule, even though appellant has been constantly bringing it to their attention.

The truth is that it was necessary to ignore Rule 18.03 in order to maintain respondent's discretion to deny position under Rule 4.03(a). Respondent's solution to the problem: If misapplying the law conflicts with other law, simply ignore the law that comes into conflict and continue the misapplication. ...

Because the provisions of Civil Service Rule 18.03 have been routinely and resolutely ignored by respondent and the courts involved with this case, appellant has been denied a hearing on the cause of discharge, such hearing being absolutely guaranteed by the state and federally protected under the Fourteenth Amendment. (See Logan [455 U.S. 422]).Therefore, Los Angeles County Civil Service Rule 18.03 is unconstitutional as applied by omission against appellant. [Appellant's Opening Brief, B024959, pp 41-42]

23. (e) Los Angeles County Civil Service Rule 18.03: Appellant repeats her constitutional challenge of LACCSR 18.03 as presented in her opening brief.... Under this challenge, appellant cited CT#1 pp 571-572; CT#2 278/2-11; CT#1 376, 399, 569-570, and again the Logan case, supra. The gist of this challenge is based on the fact that the statute was completely ignored by everyone-- all County officials and all courts. The only reference given that rule by the Court of Appeal in its current opinion was to merely acknowledge that appellant was challenging its constitutionality (Opinion p.9) and to take "judicial notice" of Rule 18.03....(Opinion, p.2)

to the California Supreme Court,[24] the Rule has remained unaddressed by anyone until the time of preparing this Jurisdictional Statement!

Because of the serious constitutional violation to appellant that has been caused by the failure of the County and the California courts to address this Rule, allowing the violation to stand, appellant brings her challenge now to this Court.

Otherwise, nothing about these rules has been discussed by this appellate Court in its "Discussion". Despite the mandatory wording of Rule 18.03, its application to appellant's case has remained unaddressed, as has all portions of the record cited, as well as the Logan case. [Pet.for Rehg. p.9]

24. Appellant repeats her constitutional challenge of Civil Service Rule 18.03 as presented in her Opening Brief.... To support this challenge, appellant cited [same references as listed in Fn.23] This challenge is based on the fact that this statute was completely ignored by everyone-- all County officials and all courts. The only mention of this rule by the Court of Appeal this time around was to merely acknowledge appellant's constitutional challenge...and to take "judicial notice" of Rule 18.03.... Despite the mandatory wording of Rule 18.03 its application to appellant's case has remained unaddressed entirely. [Pet. for Review, pp 11-12]

2. Los Angeles County Civil Service Rule 4.03(a)

On February 1, 1984, the Civil Service Commission sent appellant a letter denying her demand for a hearing on the discharge, citing Civil Service Rule 4.03(b).[25] Appellant responded to that decision by submitting a brief, with points and authorities, entitled "Objections to Ruling Without Hearing, and to Denial of Remedy; Demand for Full Evidentiary Hearing; Request that Ruling be Vacated Pending Full Hearing, or, in the Alternative, for Dismissal for Lack of Jurisdiction; Request for Written Statement of Ruling, for Transcript of Proceedings, and for Findings." That brief was

25. "Dear Ms. Branson: ¶The Civil Service Commission, at its meeting held on February 1, 1984, after a complete review of written material submitted, denied your request for a hearing on your discharge, effective December 30, 1983, from the position of Secretary V, Office of the District Attorney. ¶The Civil Service Commission may consider only one amended appeal as allowed under Civil Service Rule 4.03(b)." [Clerk's Transcript filed 7/17/85, L.A. Superior Court, Case No. C492725, p.168]

incorporated into appellant's "Notice" to the Civil Service Commission dated February 8, 1984,[26] which contained appellant's challenge of the Commission's use of Rule 4.03(b) instead of Rule 4.03(a) in its denial in appellant's discharge. Both Rules 4.03(a) and 4.03(b) are quoted in Appendix E.

26. "PLEASE BE ADVISED AND ON NOTICE that your letter of February 1, 1984, a copy of which is attached, is not well taken for the following reasons:

(1) My husband, representing me in these proceedings, understood that a final determination had been reached at the meeting of February 1st, to which we submitted our objections dated February 3, 1984, for the reasons given therein. We hereby incorporate herein said document, together with its supporting declaration and points and authorities.

(2) That we have covered the provisions of Rule 4.03 in paragraph 2, page 15, of our points and authorities, stating that the original request for hearing was timely and all evidence sufficiently stated for appeal. That only subdivision (a) applies to discharge proceedings, while 4.03(b) -- which is cited in your letter attached -- refers to "all other cases". ¶Therefore, you have cited a section that does not apply to my case, which is a discharge of a permanent employee, provided for in Rule 4.03(a) and not 4.03(b).

(3) It is to be also noted that pursuant to Rule 18.02, the notice of discharge was to have been sent by certified or registered mail, which was not done in my case; therefore, pursuant to your own rules, the notice was not served properly, and these proceedings are improper, invalid, and moot.

Appellant also pointed out the fact that the Notice of Discharge was not served pursuant to Civil Service Rule 18.02(b) [27] and was a jurisdictional defect voiding any decisions of the Civil Service Commission in

¶THEREFORE, PLEASE BE ADVISED that the Commission has acted in excess of its jurisdiction in these proceedings and that their actions should be dismissed and petitioner restored to her assigned position with full pay as authorized by Salary Ordinance, together with all back pay from April 8, 1983, interest at the rate of 12 percent per annum, and damages which are still accruing at this time.
... ¶ ¶
... ¶ P.S. ...
¶Also, the word "amended" implies that the original was deficient or defective in some way, and an amended document would correct such deficiencies. I have not been advised of what such deficiencies are in my (iginal request for appeal, or even that it was deficient at all! It was just denied-- period."
[Clk's Trans 7/17/85 pp 166-167]

27. ...The appointing power shall submit to the Commission evidence showing that the employee has been served with the notice of discharge or reduction either personally or by certified or registered mail addressed to the employee's last known address, and the date of such service. (emphasis added) Los Angeles County Civil Service Rule 18.02(b), pertinent portion.

appellant's case.[28]

Nevertheless, the Commission operated under the guidelines of Rule 4.03(b) in appellant's discharge when it pretended that appellant's objections was an "amended appeal" and set the matter again for consideration March 7, 1984. (Clerk's Trans p.172) Appellant once again responded to the Commission by certified letter dated February 17, 1984.[29]

28. ...[T]he notice is in the nature of process by which the board...may acquire jurisdiction to act upon the appeal. ... Where a statute prescribes the mode of acquiring jurisdiction, the mode must be complied with or the proceedings will be a nullity. ... Notice, when required by statute is not the equivalent of knowledge of their intended action. Williams v. Bergin (1895) 108 Cal. 166, 169-171.

29. "FURTHER OBJECTIONS TO ARBITRARY & CAPRICIOUS ACTION BY COMMISSION....
¶PLEASE BE ADVISED AND NOTED ON THE RECORD, that we hereby submit further objections to your continued arbitrary and capricious actions, now evidencing either (a) fraudulent concealment of malicious intent, or (b) malicious intent to refuse to follow the law (your own rules) after being informed by our previous Objections and Notice of your failure to do so,....
... ¶ ¶
¶PLEASE BE FURTHER ADVISED AND NOTED ON THE RECORD that...you are now aware of the contents of our

Despite all of appellant's notification to the Civil Service Commission regarding its violation of Civil Service Rules and of appellant's rights, the Commission wrote another letter to appellant on March 7, 1984 stating that it denied her amended appeal.[30]

Notice with Objections previously submitted wherein the Commission has been advised of its procedural errors; that such malicious intent to refuse to follow the law will become manifest on the record when the Commission undertakes to proceed under the misapplication of its own Rules as described in our Notice dated February 8, 1984.
¶PLEASE BE FURTHER ADVISED AND NOTED ON THE RECORD that an amended request for appeal was not shown by the Commission to be required by law in this case; further, that said petitioner has not been advised by the Commission in what way her original request for appeal was defective, requiring amendment; PLEASE FURTHER NOTE that petitioner did not amend anything, but merely restated what had already been submitted, pointing out several procedural and jurisdictional defects as contained in her Notice dated February 8th.
....
[Clerk's Trans. 7/17/85 pp 170-171]

30. "The Civil Service Commission, at its meeting held on March 7, 1984, after a complete review of written material submitted, denied your amended appeal of the Commission's decision of February 1, 1984, to deny your request for a hearing on your discharge, effective December 30, 1983, from the position of Secretary V, Office of the District Attorney." [Clerk's Trans. 7/17/85 p.176]

Appellant next filed a Petition for a Peremptory Writ of Administrative Mandamus on April 2, 1984, pursuant to Civil Service Rule 4.14(a).[31] Appellant alleged that it was the mandatory and ministerial duty of the Commission to grant appellant a full evidentiary hearing pursuant to Civil Service Rules 4.03(a), 4.06, 4.07 and 18.03,[32] and that the Commission violated that duty.[33]

31. The provisions of Section 1094.6 of the California Code of Civil Procedure shall be applicable to any petition for judicial review of a decision of the commission suspending, reducing or discharging an officer or employee.
Los Angeles County Civil Service Rule 4.14(a)

32. That respondent Commission had the clear, present and ministerial duty to grant petitioner a full evidentiary hearing pursuant to Rule 4.03(a), Rule 4.06, Rule 4.07, and Rule 18.03 of the Los Angeles County Civil Service Rules; ... That such duty is entirely mandatory and ministerial in nature--not involving discretionary acts; that petitioner is entitled to have the Rules strictly enforced and followed; that petitioner submitted a timely request for hearing and sufficiently stated specific facts and reasons in support of her appeal; said request for hearing is part of the administrative record herein.
[Clerk's Trans. 7/17/85 pp 11-12]

33. That despite this clear, present and mandatory duty, the Los Angeles County Civil Service Commission stated orally...at its meeting February 1, 1984, that

Despite appellant's numerous case authorities cited in her petition to support her contentions that it was a mandatory duty to grant appellant an evidentiary hearing on her discharge upon her request therefor according to Constitutional due process mandates, County Counsel, De Witt W. Clinton, by his deputy, Joe Ben Hudgens, responded to those contentions by mere general denial of those paragraphs in the petition.[34] In

it could effect no remedy in this case, but that petitioner's remedy is in the Superior Court; that by refusing to grant petitioner a hearing as required by law, respondents then and there divested themselves of any jurisdiction to further act in this case; they nevertheless proceeded in excess of jurisdiction, and, under color of law, affirmed the discharge. ¶In an apparent attempt to deceive petitioner into believing that such ruling was legal and legitimate, respondents ruled under Rule 4.03(b) instead of Rule 4.03(a), the appropriate rule in discharge proceedings. ...[P]aragraph (a) of Rule 4.03 applies to all discharge and reduction cases, while (b) applies to all other cases (other than discharge and reduction). The granting of hearings is discretionary under (b), however it is mandatory upon request under (a), as well as by Rule 18.03. [Clerk's Trans. 7/17/85 p.12]

34. Respondents deny each and every allegation of each and all of paragraphs 8, 9, and 10. [Clerk's Trans. 7/17/85 p.335]

their points and authorities relating to that contention, the County relies entirely upon Civil Service Rule 4.03(a) as authority for denying the hearing, despite appellant's citations indicating the necessity for such hearing under due process requirements.[35] Appellant orally argued in court her right to be heard on the charges of her discharge and the fact that the County was, for the

35. THE PETITION AND ITS ACCOMPANYING EXHIBITS FAIL TO ESTABLISH THAT PETITIONER IS ENTITLED TO A CIVIL SERVICE HEARING. ¶In paragraphs 8 and 9 of the petition, petitioner makes the argument that respondent Civil Service Commission has a ministerial duty to grant her a hearing. That position is flatly contradicted by Los Angeles Civil Service Rule 4.03(a): ¶"In cases of discharge or reduction of a permanent employee other than a probationary employee covered by the provisions of Rule 18, or suspension in excess of five days, a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as provided in Rule 18.02. The petition shall be denied if such facts and reasons are not stated." ... ¶ ¶Read in its entirety, Rule 4.03(a) reveals that there is no non-discretionary duty to grant petitioner a civil service hearing; on the contrary, there is a duty to deny such a hearing if petitioner does not state enough facts and reasons to justify granting a hearing. ... "
[Clerk's Trans. 7/17/85 pp 341-342]

first time, asserting Rule 4.03(a) after having denied the hearing under Rule 4.03(b). However, the court upheld the position of the County that they had the right to summarily decide whether or not to grant a hearing on the discharge, based upon the subjective view of the County (my accuser) as to the sufficiency of my defenses.

Because the court accepted the County's position that they had discretion to deny a hearing on the charges, appellant's petition was not treated as an administrative mandamus under Code of Civil Procedure section 1094.6 as required by law (See Fn.31), but was converted into an ordinary mandate under Code of Civil Procedure section 1085. In that way, the mandatory hearing requirement was avoided and the court arbitrarily ordered a penalty proceeding based on the presumption that the charges were established.

As a result of that decision, appellant

petitioned for a writ of prohibition to the Court of Appeal on June 28, 1984, in Case No. B006014.

The first and only time the County talked about appellant's property interest was in their opposition to the petition for a writ of prohibition. They agreed that indeed a property interest was granted appellant in the retention of her employment.[36] However, the County contends that the due process required under the property interest does not include a civil service hearing in every case, citing as authority for that proposition Civil Service Rule 4.03(a).[37]

36. Real parties in interest agree with petitioner that her former status as a permanent employee of the County of Los Angeles gave her a property interest in the retention of her employment, and that her property interest could not be terminated without affording her due process of law.
[Opposition to Pet'n for Writ of Prohibition, p.2]

37. Paragraph A of Los Angeles County Civil Service Rule 4.03 reads in pertinent part: (quoted in pertinent part). Thus, the due process protection for permanent employment by the County of Los Angeles does not require a civil service hearing in every case,

Such a position was rejected in Arnett v. Kennedy, which states that such an approach "is incompatible with the principles laid down in Roth and Sindermann," and that such a view "misconceives the origin of the right to procedural due process." [38] That right is conferred, not by legislative grace (e.g. Rule 4.03(a)), but by constitutional guarantee. Therefore, Rule 4.03(a) does not deter-

but only in those instances in which the petition for hearing indicates that there is an issue to hear. [Opposition to Petition, p.3]

38. The plurality opinion evidently reasons that the nature of appellee's interest in continued federal employment is necessarily defined and limited by the statutory procedures for discharge and that the constitutional guarantee of procedural due process accords to appellee no procedural protections against arbitrary or erroneous discharge other than those expressly provided in the statute. The plurality would thus conclude that the statute governing federal employment determines not only the nature of appellee's property interest, but also the extent of the procedural protections to which he may lay claim. It seems to me that this approach is incompatible with the principles laid down in Roth and Sindermann. Indeed, it would lead directly to the conclusion that whatever the nature of an individual's statutorily created property interest, deprivation of that interest could be accomplished without notice or a hearing at any time. This view

mine the procedures to be used in discharge proceedings-- the United States Constitution does. The Roth court stated that the purpose of the constitutional right to a hearing is to provide an opportunity for a person to vindicate his claims. [39]

misconceives the origin of the right to procedural due process. That right is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in federal employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. As our cases have consistently recognized, the adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms. Goldberg v. Kelly, 397 U.S. 254 (1970); Bell v. Burson, 402 U.S. 535 (1971); Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972).

39. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims. (Board of Regents v. Roth supra, 408 U.S. at 577).
Arnett v. Kennedy, supra, 416 U.S. at 165.

Accordingly, by admitting that appellant had a property interest in the retention of her employment with the County of Los Angeles, the County must necessarily admit that her right to procedural due process is conferred by constitutional standards, and not by Rule 4.03(a) as they are contending.

Appellant replied to the opposition by challenging the constitutionality of Rule 4.03(a), and by renewing her challenge of agency jurisdiction of the Commission, as well as a few other issues. The Court of Appeal, Second Appellate District, Division Five, (the same court handling both appeals in this case) responded to these important jurisdictional and constitutional issues by sending a post-card denial of the petition on July 10, 1984; the California Supreme Court likewise sent a post-card denial of its review on August 8, 1984. Thus began the judicial coverup by the higher State

courts of the County's wrongdoing in appellant's discharge from civil service. The courts have never addressed appellant's property interest at any time throughout this case.

Since the higher courts refused to grant appellant any relief from the sham penalty proceeding that was ordered by the Superior Court as a result of converting appellant's petition from administrative mandamus to an ordinary mandate, ignoring appellant's substantive right to be heard on the cause of her discharge, her property interest was destroyed. [40]

40. [I]t is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference-- whether the Commission's action is taken through negligence, maliciousness, or otherwise. ...Unlike the complainant in Parratt, Logan is challenging not the Commission's error, but the "established state procedure" that destroys his entitlement without according him proper procedural safeguards. Logan v. Zimmerman Brush Co. (1982) 455 U.S. 422, 436.

After having been forced to undergo that sham proceeding, in violation of appellant's substantive liberty interests, the County failed to file a return to the writ and appellant had to revive her case by filing a Motion to Vacate Void Judgment on March 22, 1985. Appellant discussed in that motion the conflict between the County's interpretation of Rule 4.03(a) and the clear mandate of Rule 18.03, which was totally ignored by the County. [41] Some of the fraud and deception used in citing Rule 4.03(a)

41. ...It is not necessary for petitioner to prove a "meritorious defense" or to show "sufficient facts and reasons" prior to a full evidentiary hearing. A careful reading of Civil Service Rule 4.03(a) will show that the phrase "sufficient specific facts and reasons" relates to Rule 18.02 which states that such facts and reasons must first have been presented to the appointing power for consideration if it was possible to do so. Any other interpretation of Rule 4.03(a) would not only be in direct conflict with Rule 18.03, but with established case law, state and federal, on the subject of "discharge for cause" and would be unconstitutional.
[Clerk's Trans. 7/17/85 pp 548-549]

was also discussed in that motion. [42]

Appellant also discussed the similarity of their interpretation of Rule 4.03(a) with former Rule 19.13 which has been

42. ... Respondent's first plan of action was to hide behind their "discretionary denial" rule (Rule 4.03(b)) which, of course, does not apply in discharge proceedings. When petitioner pointed this fact out to respondents,... respondents maliciously ignored petitioner's demands that they apply the proper rule to her case, which was Rule 4.03(a). Instead of cleaning up their act, respondents let stand their denial of a hearing under Rule 4.03(b). ... ¶Petitioner was then forced to petition this court for a writ of administrative mandamus.... Respondents then decided they could no longer hide behind Rule 4.03(b), and so for the first time in these proceedings, respondents alleged....Rule 4.03 (a) as their authority for denying petitioner's hearing, still claiming to have discretion to deny the hearing under that Rule, hiding behind the "insufficient facts and reasons" clause.... Instead of finding the administrative ruling invalid under Rule 4.03(b) when it was made, and also finding that respondents' claim for the first time at the superior court level to rule under Rule 4.03(a) to be invalid, the judge totally overlooked both of those gross violations of procedure, and permitted respondents to claim their authority to deny petitioner a hearing under Rule 4.03(a), although she was never informed at the administrative level that her hearing was denied because of "insufficient facts and reasons". [Clerk's Trans. 7/17/85 pp 565-566]

repealed. [43] Appellant pointed out that the Court of Appeal has stated that the use of the summary procedures of the automatic resignation statute would be done at the peril of the employer. [44]

43. Respondents attempt to apply the principles of former Rule 19.13 (the implied resignation rule) under the guise of current Rule 4.03(a). ... Unlike former Rule 19.13 which closed out defenses summarily, and permitted the County to say "there's nothing to hear" after depriving a permanent civil service employee of his career and livelihood, the "issue to hear" in petitioner's case is the "discharge for cause" wherein the burden of proof and going forward with the evidence rests upon the employer (the appointing power)-- not on the employee.
[Clerk's Trans. 7/17/85 p.567]

44. The "implied resignation" statute (sometimes referred to as the "automatic resignation" statute) no longer exists, and the charge of "unauthorized absences" has now become a ground for "discharge for cause" which is not a summary procedure. The appellate court has already stated, at least twice, that any application of the summary procedure of the automatic resignation statute would be at respondents' peril. (see Curia v. Civil Service Com. (1981) 126 Cal.App.3d 994; Zike v. State Personnel Board (1983) 145 Cal.App.3d 817, 823 n.5)
[Clerk's Transcript 7/17/85 pp 568-569]

The judge did not act on the issues presented in the motion, but instead treated the motion as a return to the writ. The issues of the motion being ignored, appellant filed an appeal (the first appeal) on October 15, 1985, Case No. B014099. Appellant's Opening Brief begins with a statement showing the prejudice of Division Five of the Court of Appeal, which is also assigned to appellant's state appeals, in refusing to accept appellant's petition for a writ of prohibition; the closing paragraph of that opening brief also discusses that relief should have been forthcoming in Case No. B006014.

Rule 4.03(a) is discussed in that Opening Brief as part of the second of twelve disputed facts, or contentions, listed by appellant.[45] Based on the fact that respondents

45. (2) Appellant has not established that she is entitled to a Civil Service hearing. ...
Respondents' only authority for this contention is

did not rely on Rule 4.03(a) when denying appellant's hearing on her discharge, appellant stated in her appeal that respondents are estopped from alleging Rule 4.03(a).[46]

their interpretation of Civil Service Rule 4.03(a), by stating that said Rule read in its entirety "reveals that there is no nondiscretionary duty to grant petitioner a civil service hearing; on the contrary, there is a duty to deny such a hearing if petitioner does not state enough facts and reasons to justify granting a hearing." ... Respondents' sole reliance is the final sentence of Rule 4.03(a) which states "The petition shall be denied if such facts and reasons are not stated."

Respondents further attempt to justify their interpretation of Rule 4.03(a), as they apply it to appellant's case, by quoting from Board of Regents v. Roth (1972) 408 U.S. 564, 577 ... . After citing from Roth that "[p]roperty interests...are not created by the Constitution [but] [r]ather...by existing rules or understandings that stem from...state law ...", respondents then quote portions from Rule 4.03(a) which they contend limit the granting of a hearing, even in the discharge of permanent employees, only to petitions that state what they deem are "sufficient specific facts and reasons in support of the employee's appeal..." Respondents' conclusion then is that Rule 4.03(a) expressly limits appellant's property interest that entitles her to the due process protection of an evidentiary hearing.

However, respondents did not cite Rule 4.03(a) when denying appellant's hearing, but ruled under Rule 4.03(b). ... [Opening Brief, B014099, pp 40-41]

46. Respondents estopped from alleging Rule 4.03(a).

Respondents are estopped from alleging anything under Rule 4.03(a), which eliminates Facts D-2

Appellant also stated in her appeal that respondents were applying the summary procedures of the former implied resignation statute under the guise of Rule 4.03(a).[47]

through D-6. Those contentions are inadmissible in this appeal, as they were at the Superior Court level, so long as they rely on any interpretation of Rule 4.03(a), since respondents refused to apply Rule 4.03(a) in appellant's discharge from County service. ... Appellant has already alleged this estoppel in her reply to opposition to her petition in Case B006014, page 3;.... Note that only Rule 4.03(b) is cited by the Commission in that letter denial, and there is no statement whatsoever that appellant did not state sufficient facts and reasons for her appeal. ... See also ... where the petition for administrative mandamus has alleged this discrepancy, showing that the Commission acted under Rule 4.03(b) by creating a meeting to consider an "amended appeal" which did not even exist, since one is not required in discharge cases. ...

Appellant argued the point before Judge Epstein... but he refused to consider appellant's argument and totally ignored the fact that respondents were, for the first time, claiming their justification under Rule 4.03(a), after maliciously refusing to do so at the administrative level. [Opening Brief, pp 54-55]

47. Respondents have attempted to apply the summary procedure of former Civil Service Rule 19.13 under the guise of current Rule 4.03(a)..., which summary procedures (regardless of what label respondents choose to give it) was taken at respondents' peril. [Opening Brief, p.65]

However, rather than be responsive to appellant's opening brief, the respondents merely incorporated their opposition papers in Case B006014 (Petition for Writ of Prohibition) and cited Rule 4.03(a) as one of only two authorities in response to appellant's brief. Not a single authority cited by appellant was addressed; in fact respondents again cited Rule 4.03(a) in defiance of and without addressing the estoppel issue.

Respondent's opposition to the Petition for Writ of Prohibition was already discussed on pages 27-30 herein. Respondent's position "is incompatible with the principles laid down in Roth and Sindermann" and "misconceives the origin of the right to procedural due process." (See Fn.38, ante.) By admitting that appellant had a property interest in the retention of her employment, respondents then necessarily must admit that appellant's right to procedural due process

is conferred by constitutional standards, and not by Rule 4.03(a) as they contend. (See page 30, ante.)

Appellant replied to respondent's purported "responsive brief" by first indicating that they failed to address the estoppel issue regarding Rule 4.03(a).[48] This failure

48. ...The one of only two legal authorities listed by respondents is Civil Service Rule 4.03(a), which appellant has shown respondents to be estopped from alleging. ... This citing and relying on Rule 4.03(a) by respondents, in light of appellant's showing by the record that such cannot legally be done in this appeal, immediately confirms the continued malicious intent to deprive appellant of her Constitutional and civil rights by any means, even of impropriety. The showing made by appellant on this estoppel issue has not been addressed by respondents, nor even alluded to by them. [Appellant's Reply Brief, p.1]

A primary factor in deciding the hearing issue is respondents' failure to address the estoppel issue raised by appellant as her first sub-issue. ... Appellant stated ...that the contentions raised by respondents, shown by Facts D-2 through D-6 [Disputed Facts]... are inadmissible in this appeal, so long as they rely on any interpretation of Rule 4.03(a). Respondents have failed and refused to address this estoppel issue which should invalidate any argument they may have on the hearing issue, absent any legal justification why respondents should not be estopped from alleging Rule 4.03(a). [Reply Brief, pp 4-5]

to address the estoppel issue and continue to rely on Rule 4.03(a) shows bad faith on the part of respondents, as stated by appellant.[49]

Appellant also replied to respondent's failure to address the "Skelly" defects and how Rule 4.03(a) played a role in that omission.[50]

49. Appellant has stated in the AOB that respondents are estopped from alleging or relying on Rule 4.03 (a). ... Appellant specifically referred to the record to support her position; nevertheless respondents maliciously continue to do so, even in light of evidence showing that they may not do so. Besides the general false misrepresentations made in their document, this malicious use of Rule 4.03(a) despite evidence disfavoring such use, shows bad faith in presenting this purported "reply brief" [as respondents refer to their responsive brief], and sanctions should be awarded accordingly,....
[Appellant's Reply Brief, p.10]

50. The third sub-issue covered the defects of the pre-termination hearing. ... Absent any response from respondents addressing this issue, it must be conceded that respondents did indeed conduct appellant's discharge as an "implied resignation", by attempting to apply the summary procedure of former Civil Service Rule 19.13 under the guise of current Rule 4.03 (a) as interpreted by respondents. This summary procedure was taken at respondents' peril. ...
[Appellant's Reply Brief, pp 5-6]

In order to get around the "hearing requirement" issue built into administrative mandamus under California Code of Civil Procedure section 1094.5 (under which appellant had petitioned), which would knock apart the tenacious holding by the County that they had "discretion to deny" a hearing under Rule 4.03(a), respondents stated in their response to appellant's Opening Brief that the petition was "erroneously termed" administrative mandamus. Such contention, of course, is based on the false presumption that respondents did, indeed, have discretion to deny a hearing on the charges in appellant's discharge.

In the Petition for Rehearing, appellant stated that the misapplication of Rule 4.03 (a) violates the Equal Protection Clause.[51]

51. III. THE COURT OF APPEAL HAS OMITTED FROM ITS OPINION THE "RULE 4.03(a) ISSUE" WHICH INVOLVES EQUAL

Appellant also pointed out that she attempted to have the validity of Rule 4.03(a) discussed at oral argument, however, the Court interrupted her stating that they were in-

PROTECTION OF THE LAW. (Federal question)
("Windsor" notice repeated, 353 U.S. 364)
Appellant stated in her reply brief... that respondents were insisting on relying on Civil Service Rule 4.03(a) as authority for denying appellant's evidentiary hearing on the cause of her discharge, despite the fact that they are legally estopped from doing so as explained in the AOB. ... By failing to specifically address this issue, this Court has effectively affirmed, by letting stand, respondents' reliance of authority on Rule 4.03(a) to deny appellant's federally-established right to full due process. ... [T]he state cannot adopt its own procedures and interpretations falling short of federal due process standards. Therefore, this Court must examine Rule 4.03(a), as interpreted by respondents and applied against appellant in this case, in Constitutional terms.

Although it is not necessary to consider local rules when addressing the federal due process standards to be applied to appellant under a "for cause" discharge, this Court must conclude that Rule 4.03(a) does not meet federal standards of due process. However, this Court must examine Rule 4.03(a) in terms of meeting or violating the Equal Protection Clause.

As analyzed in Logan [v. Zimmerman Brush Co. 455 U.S. 422], the state court recognized that the agency establishes two categories of claims. Interpreting Rule 4.03(a) as the respondents did in this case,... said rule, asserted and now affirmed as controlling, divides claims into two discrete groups that are accorded radically disparate treatment:

clined to dismiss the appeal based on non-appealability.[52] Clearly, the Court of Appeal was not interested in addressing the issues raised in the appeal, and evaded their responsibility by dismissing the appeal for

(a) Those that state sufficient facts and reasons and (b) Those that do not. The first group receives full procedural due process; the second are unceremoniously and finally terminated.

> "The state converts similarly situated claims (e.g. claims of nonprobationary civil service employees discharged for cause, timely requesting full hearing) into dissimilarly situated ones. (e.g. sufficient facts and reasons versus insufficient facts and reasons), and then uses this distinction as the basis for its classification. This, I believe, is the very essence of arbitrary state action." Logan, supra, 455 U.S. at 442.

Such classification is arbitrary, irrational, and not reasonably related to a legitimate purpose, and creates the "invidious discrimination" that is to be protected against by the Equal Protection Clause.... [Pet. for Rehg., B014099, pp 21-22]

52. At oral argument before this Court, appellant began her argument by stating what she particularly desired this Court to rule on, intending to fill in her reasons and authority thereafter. Appellant had six points to state, but she was interrupted by this Court after stating only the first four points and half of point number five. For the record, appellant shows the points that were stated before this Court prior to their interruption.

non-appealability without considering the Augmented Record on Appeal which would have nullified that decision. All jurisdictional issues, as well as Rule 4.03(a) and Rule 18.03 were ignored by the Court of Appeal, and its decision (written opinion) was based on the presumption of regularity of all those issues that appellant had challenged in her appeal. Rehearing was summarily denied on May 2, 1986.

Appellant requested this Court to find in particular: (1) That Judge Epstein acted in clear absence of subject-matter jurisdiction; (2) Wrongful discharge; (3) Rule 4.03(a) invalid; (4) That the respondents violated two counts of Government Code section 815.6 based on their failure to carry out their mandatory duty under Civil Service Rules 18.02 (b) and 18.03, discussion of the latter rule (18.03) having been avoided "like the plague" throughout this case; (5)That since reinstatement is proper only after all issues have been resolved at an evidentiary hearing, and since the respondents denied an evidentiary hearing in this case, reinstatement at this point is unfeasible... [at that point this Court interrupted by stating that those were matters to be presented at a trial court; that this was not a trial court; that the issue before this Court was going to be limited to the issue of appealability; that this Court was inclined to dismiss the appeal for lack of appealability.] [Pet. for Rehg. pp 25-26]

Appellant filed her Petition for Review to the California Supreme Court in which she challenged the constitutionality of Rule 4.03(a) on its face and as applied in appellant's case. (The same question now before this Court). That petition was also summarily denied.

Once again, the case was left in an abandoned posture, the Court of Appeal neglecting to remand the case back to the Superior Court so that it could be brought "to finality". Appellant was again forced to revive the case by filing a Motion for the Court to Clarify the Record, etc. on August 20, 1986, in which appellant renewed her constitutional challenge of Rule 4.03(a).[53]

53. The motion will be made on the following grounds: ... (5) That the court upheld, by failing to disallow, respondents' claimed authority of Civil Service Rule 4.03(a) for petitioner's summary discharge without a hearing on the cause, said ...rule being unconstitutional on its face and as applied against petitioner. [Clerk's Trans 2/20/87 p.207]

Respondent's only argument in opposition to the motion was "res judicata", knowing that the judgment was still not final, which is why the Court of Appeal denied the previous appeal. None of appellant's issues were addressed, including her challenge of Rule 4.03(a). The judge likewise refused to address any of the issues, considering his job to be only to get the judgment final in form, the voidness of the underlying inter-

Petitioner has been denied a full evidentiary hearing to determine the cause of her discharge from permanent civil service employment, which was a violation of state law and of the United States Constitution. This denial, according to the Logan case,...amounts to a destruction by the respondents and real parties, with the aid of the state courts, of petitioner's statutorily-conferred property interest in procedural due process. Therefore, petitioner requests this court to rule on the constitutionality of the various statutes and rules that were used to achieve such destruction:
... ¶ ¶ (3) Petitioner challenges the constitutionality of Civil Service Rule 4.03(a) on its face and as applied against petitioner, as authority denying a full evidentiary hearing to determine the cause of petitioner's discharge from permanent civil service employment with the County of Los Angeles, a constitutionally-protected right.
[Clerk's Trans. 2/20/87 pp 212-213]

locutory judgment notwithstanding.

The judge ordered County Counsel to provide "a final judgment" for his signature; "a final judgment" was prepared and submitted by respondent which included all the jurisdictional, constitutional, and legal defects and violations which appellant has been challenging from the inception of the proceedings. It was only a matter of form--from "interlocutory" to "final". None of the issues of appellant's motion was adjudicated; the judge didn't perform a judicial function; he made no decision of a judicial nature.

On November 3, 1986, appellant filed a Brief in Opposition to Proposed Judgment, in which she requested the judge take judicial notice of her existing Motion to Clarify and her several constitutional challenges which had not yet been addressed by the court, (including her challenge of Rule 4.03(a)). Appellant repeated her constitutional chal-

lenges in the opposition to the proposed judgment, specifically requesting that the Superior Court address those challenges in the first instance.[54]

54. The destruction of petitioner's property interest ...shown to have occurred on the record of this case ...and both appellate court cases deriving therefrom (B006014 and B014099), and all California courts involved with petitioner's ...cases failing and refusing to address jurisdictional and voidness questions going to the validity of all judicial and quasi-judicial acts in petitioner's discharge from permanent civil service employment, now brings the matter to petitioner's challenge of the constitutionality of the statutes and rules used to effect said destruction. PETITIONER SPECIFICALLY REQUESTS THIS COURT (SUPERIOR COURT) TO ADDRESS THIS CONSTITUTIONAL CHALLENGE OF STATUTES IN THE FIRST INSTANCE. ... ¶ ¶ (3) Petitioner challenges the constitutionality of Los Angeles County Civil Service Rule 4.03 (a) on its face and as applied by respondents in summarily denying petitioner's timely request for a full evidentiary hearing on the cause of her discharge from permanent civil service employment, pursuant to her statutorily-conferred property interest and legitimate claim of entitlement thereto. Although respondents summarily denied petitioner's timely request for a hearing on the cause of her discharge under Rule 4.03(b)..., respondents nevertheless claimed their authority to make such summary denial under Rule 4.03(a) <u>for the first time</u> at judicial review in Superior Court ...[and all courts have allowed such claim to stand].
[Clerk's Transcript, 2/20/87, pp 531, 532, 533]

The Superior Court refused to address those challenges at all and appellant was forced to bring them up on her second appeal filed July 29, 1987, Case No. B024959. The "discretion to deny" under Rule 4.03(a) was thoroughly briefed to the Court of Appeal.[55]

55. Appellant challenges the constitutionality of Los Angeles County Civil Service Rule 4.03(a) on its face and as applied to appellant. (rule quoted).

The loophole in CCP Section 1094.5(a)...has permitted the development of Rule 4.03(a), as worded above, giving the County (respondent) discretion to deny a hearing on the cause of discharge, and thereby "allow[ing] the [County] to destroy at will virtually any state-created property interest" which approach has been rejected by the U.S. Supreme Court. ... Since CCP Section 1094.6 is stated in the Civil Service Rules as the section under which to seek judicial review of any decision of the Commission suspending, reducing or discharging an employee (CSR 4.14(a)), it is imperative that CCP section 1094.5, the procedural section authorized by section 1094.6, eliminate any loopholes that would permit such discretion to deny ... by the agency that confers the property interest.

> "'While the legislature may elect not to confer a property interest,... it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards....'" [citations] Logan v. Zimmerman Brush Co. ... 455 U.S. 422, at 432.

Contrasting the above with respondent's position, relying wholly on Rule 4.03(a) in upholding appel-

lant's discharge without a hearing (which position the courts have arbitrarily endorsed without further substantiation), appellant quotes the testimony of Mr. Hudgens, then representing respondent:

> MR. HUDGENS: The County rules are to the contrary, and authorize the Civil Service Commission to deny. It's the appointment rule. If there are not sufficient facts to hold a hearing, the rule says that the hearing should be denied, and the court, I suppose, would have to say that that part of the rule is unconstitutional in order to allow the Civil Service Commission to grant a hearing on a matter that has not been raised. **

** ... THE MATTER OF THE DISCHARGE HAS BEEN RAISED! Judging from the above testimony, taken at the initial hearing on appellant's petition...it appears that this constitutional challenge of Rule 4.03(a) is an absolute must, especially since even the courts' myopia has prevented any vision beyond Rule 4.03(a). ... ¶

Central to the problem in this entire case is the lack of a clear distinction between DISCHARGE FOR CAUSE and IMPLIED RESIGNATION in respondent's Civil Service program. This distinction must be clearly established in writing, with specific steps in procedure delineating in no uncertain terms when and under what circumstances an "unauthorized absence" case is an "implied resignation" case, and, reconciling that determination with a permanent employee's property interest, clearly set forth in writing the absolute obligation on the part of the employer, in the event the permanent employee charged with "unauthorized absences" elects to exercise that property right, to go forward with a prompt post-termination hearing on that charge of "unauthorized absences". ... ¶ Because Rule 4.03(a) permits the respondent discretion to deny appellant a full evidentiary hearing on the cause of her discharge, such hearing being absolutely guaranteed by the state and feder-

For four years, the courts have been playing "cat and mouse" with this case, evading the issue of appellant's right to defend against the County's accusation of "unauthorized absenteeism" as a reading of the record itself will show.

The Reply Brief again presented appellant's argument regarding Rule 4.03(a) and Rule 18.03.[56] Appellant repeated her challenge of the constitutionality of Civil

ally protected under the Fourteenth Amendment..., and because respondent relies on Rule 4.03(a) as its authority to uphold appellant's discharge without such hearing, Los Angeles County Civil Service Rule 4.03(a) is therefore unconstitutional on its face and as applied to appellant herein.
[Appellant's Opening Brief, B024959, pp 33-37]

56. Appellant has been arguing, based on cited law, her absolute right to a full evidentiary hearing on the cause of her discharge since the inception of these proceedings. The County's position has been that it has discretion to deny such a hearing, based solely on its own local Civil Service Rule 4.03(a). The courts have refused to recognize the fact that appellant's right to such a hearing is federally mandated and constitutionally protected, and have merely gone along with the County's contention based on local rules. Even though such contention conflicts with another County rule, Civil Service Rule 18.03, the courts have simply ignored that rule and have

Service Rule 4.03(a) on its face and as applied to appellant in the Reply Brief, in her Petition for Rehearing, and again in the Petition for Review to the State Supreme Court.

As this challenge remains unaddressed by the California courts, it is now brought to this Court on appeal.

* * *

allowed the County to destroy at will appellant's protected property interest. The California Court of Appeal did recognize this right in the case of Schultz v. Regents of Univ. of Calif. (1984) 160 Cal.App.3d 768, 785-786..., citing Logan v. Zimmerman Brush Co. (1982) 455 U.S. 422, 432, which sets the standard for appellant's case. However, Division Five in appellant's case is refusing to follow legal precedent which is its duty to do in protecting appellant's property interest. The Schultz court stated that in light of Goss and Logan, there's no danger that California courts will permit local procedure to destroy a person's property interest. However, unless the County gives Division Five permission to look to legal precedent in deciding this case, which would destroy its position, it's very doubtful that it will do so, if past performance is any indication.
[Appellant's Reply Brief, B024959, pp 3-4]

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Appellant contends that the questions presented in this appeal are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

This case involves one of the most basic values in our society: the right of an individual to be free from the arbitrary exercise of government power. "The touchstone of due process is protection of the individual against arbitrary action of government." (Dent v. West Virginia, 129 U.S. 114, 123 (1889)). This protection is particularly important when government serves as one's employer, affecting the ability of the individual to be secure in his livelihood. Because the need for this greater protection in government employment has been generally recognized by our lawmakers, civil service protection has been instituted.

In affording this civil service protection, the presumption cannot be that the government power involved is correct in any deprivatory action it may take. On the contrary, the presumption must be made that government deprivation is not correct in and of itself and must be checked. The burden of proof must be on the entity bearing the greater power or advantage over the individual if the basic principles of a free society are to continue.

One of the most firmly established principles in this country is the federal protection of the individual against arbitrary state and local governments through the Fourteenth Amendment. Civil service is a statutory scheme whereby an individual is granted a substantive liberty and property interest that cannot be taken without procedural safeguards meeting federal standards. For civil service protection to be meaning-

ful, local governments cannot be in absolute control of the destiny of those to whom a substantive liberty or property interest is granted. Otherwise such a benefit would be worthless and the governing power would be free to ignore the benefit they granted. As this Court stated "While the legislature [or local government] may elect not to confer a property interest in federal [or local government] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. [T]he adequacy of statutory procedures for deprivation of a statutorily created property interest [e.g. civil service employment] must be analyzed in constitutional terms." (Arnett v. Kennedy, 416 U.S. 134, 167 (1974)).

The central problem in this case, requiring intervention of this Court, is the refusal of the California courts to hold the

County of Los Angeles to federal standards of procedural due process in conducting its discharge proceedings. The implied resignation statutes have been repealed in Los Angeles County because they provided too harsh and summary a procedure in employment termination. However, the courts are nevertheless allowing the County to apply those harsh and summary procedures under the name of "discharge for cause", even though the County has conferred upon its permanent employees a substantive property interest in the retention of their employment except for sufficient cause.

To allow appellant's case to stand as it now does, the property interest conferred upon permanent employees of Los Angeles County will have become meaningless. The County will be able to arbitrarily terminate any permanent employee at its own whim and caprice by merely concocting an unfounded

charge of "unauthorized absenteeism" and then argue that there's "nothing to hear". The employee is not afforded any opportunity to defend on the evidence. He may have a legally valid reason for his absence, however the County will be able to prejudge the employee's motivations and declare its subjective determination thereof to be final, without having any burden of proof or accountability for its actions. Not only would the substantive right become meaningless, but the Due Process Clause of the Federal Constitution would also become meaningless, since it would no longer protect the individual from arbitrary action of government in Los Angeles County civil service.

In appellant's case, Judge Epstein retreated from his original position that the grounds of the discharge were established. On June 10, 1985, Judge Epstein stated in

open court and on the record: "I BELIEVE A QUESTION REMAINS AS TO WHETHER THE DISCIPLINE IS JUSTIFIED IN THIS CASE WITH THAT SHORT CUT, AS IT WERE, OF NOT HAVING A FULL HEARING." (Clerk's Transcript filed 2/20/87 Case No. C492725, Appeal Case No. B024959, pg. 264 lines 21-23, also page 414; also Appellant's Reply Brief, B024959, pp 20-21). Judge Epstein asked Mr. Hudgens of County Counsel in open court and on the record at the May 8, 1985 proceeding: "LET ME ASK YOU THIS. IF YOU ASSUME FOR THE SAKE OF ARGUMENT ONLY -- NOT A REAL CONCESSION -- THAT THERE IS A DISPUTE AS TO WHETHER THAT'S THE REASON THAT SHE DIDN'T RETURN TO WORK OR WHETHER SOMETHING ELSE IS THE REASON, WOULD YOU AGREE A HEARING SHOULD HAVE BEEN HELD?" Mr. Hudgens responded "I BELIEVE SO". Judge Epstein: "ON THE GROUND OF DISCIPLINE?" -Mr. Hudgens: "I BELIEVE SO, YES." (Clerk's Transcript 2/20/87 p.250 lines 9-17; see also Appellant's Reply

Brief, B024959, p.18). But the courts, in covering up the County's actions, don't want to talk about those developments in this case. There is a definite need for the intervention of this Court to review the entire record and see the inconsistencies. Appellant's discharge from County service has been upheld by judicial fiat since 1984, based upon a myriad of bogus accusations and on the false presumption that the County has the discretion to deny appellant an evidentiary to determine the cause of her discharge. The California courts have upheld that presumption despite appellant's challenges thereof.

The County of Los Angeles must be brought in line with all other civil service programs following the mandates of federal guidelines. This Court made a "straightforward" pronouncement of those mandates: "In Vitek v. Jones, 445 U.S. 480, 491...,

we pointed out that 'minimum [procedural] requirements [are] a matter of federal law; they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.' This conclusion was reiterated in Logan v. Zimmerman Brush Co., 455 U.S. 422, 432..., where we reversed the lower court's holding that because the entitlement arose from a state statute, the legislature had the prerogative to define the procedures to be followed to protect that entitlement.

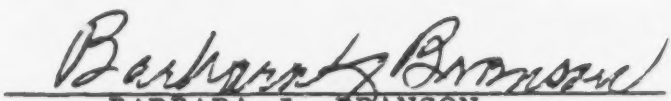
"In light of these holdings, it is settled that the 'bitter with the sweet' approach misconceives the constitutional guarantee. If a clearer holding is needed, we provide it today. The point is straightforward: the Due Process Clause provides that certain substantive rights-- life, liberty, and property-- cannot be deprived

except pursuant to constitutionally adequate procedures." (Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487, 1492-1493 (1985)).

CONCLUSION

Since the California courts have refused to address these issues, appellant respectfully requests that her questions be given plenary consideration, with briefs on the merits and oral argument.

Dated: April 15, 1988



BARBARA J. BRANSON
Appellant in Pro Per

* * *

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

BARBARA J. BRANSON, being first duly sworn, deposes and says:

That on April 15, 1988, she served three copies of the within JURISDICTIONAL STATEMENT on all parties and the State Attorney General by placing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

(Three copies each to the following):

ALAN K. TERAKAWA
Deputy County Counsel
500 West Temple St., Rm. 648
Los Angeles CA 90012

CALIFORNIA STATE ATTORNEY GENERAL*
3580 Wilshire Blvd., Suite 800
Los Angeles CA 90010

* 28 U.S.C. §2403(b) may be applicable

Dated: April 15, 1988

Barbara J. Branson
BARBARA J. BRANSON

Subscribed and sworn to
before me this 15 day
of April, 1988.

Dean J. Selimos
Notary Public in and for
said County and State.

My Commission expires 12-27-91.

APPENDIX

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BARBARA J. BRANSON,	)	2d Civil
	)	No. B024959
Plaintiff and Appellant,	)	(Super. Ct.
	)	No. C492725)
v.	)	
	)	Court of Appeal
	)	Second Dist.
LOS ANGELES COUNTY CIVIL SERVICE COMMISSION et al.,	)	F I L E D
	)	OCT 26 1987
	)	Robert N. Wilson
Defendants and Respondents	)	Clerk

Appellant Barbara J. Branson appeals from a judgment which (1) discharged a peremptory writ of mandate compelling respondent Los Angeles County Civil Service Commission to hold a hearing at which it was determined that appellant's discharge from employment was not an excessive degree of discipline for her unauthorized absence of approximately three months, and (2) denied a petition for a writ of mandate seeking a

Civil Service Commission hearing regarding the cause of appellant's dismissal. We affirm the judgment.

JUDICIAL NOTICE

Pursuant to appellant's request, we have taken judicial notice of Los Angeles County Civil Service Rules

PAGE 2 :

4.03(A), 4.03(B) and 18.03,[1/] the several decisional, constitutional and statutory laws referred to by appellant, and appellant's prior appeals before this court (Case Nos. B006014 and B014099) and the proceedings in the Los Angeles Superior Court (Case No. C492725). (See Evid. Code §§ 451, 452.)

1/ Civil Service Rule 4.03 provides, in pertinent part, as follows: "A. In cases of discharge or reduction of a permanent employee other than a probationary employee covered by the provisions of Rule 18,... a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as pro-

vided in Rule 18.02. The petition shall be denied if such facts and reasons are not stated. [¶] B. In all other cases provided for in Rule 4.01, the commission may, at its discretion, grant a hearing or make its decision on the merits based on a review of written materials submitted by the parties concerned. The commission shall deny both a request for a hearing and a review of written materials if the petition fails to state sufficient specific facts and reasons, or if, in the opinion of the commission, the specific facts and reasons stated, if true, would not entitle the petitioner to any relief. Moreover, no hearing need be granted if the commission is of the opinion, based on the moving papers and any responses thereto, that the petitioner is not likely to prevail on the merits of the petition. No amended petition need be considered if it is not filed within 10 business days of the date of denial of the original petition. No more than one amended petition may be filed...."

Civil Service Rule 18.03 provides as follows: "If the permanent employee to be discharged or reduced pursuant to Rule 18.02 so requests, the commission shall proceed in accordance with Rule 4.06. A public hearing pursuant to Rule 4 shall be held by the commission or by the hearing board. (Ord. 12321 § 1 (part), 1981.)

PAGE 3:

FACTS

Our opinion in appellant's prior appeal, Branson v. Los Angeles County Civil Service

Commission et al. (Case No. B014099, filed Spril 11, 1986), sets forth, in large part, the sequence of events leading to appellant's present appeal. As discussed at length in this court's prior opinion from which we quote:

Appellant Barbara J. Branson [] hasn't paid her taxes. All her disputes with Los Angeles County Board of Supervisors, District Attorney's Office, Civil Service Commission and Superior Court, as well as the Court of Appeals and the California Supreme Court, stem from that fact. []

[] Appellant worked for Los Angeles County (the County) as a legal secretary in the District Attorney's Office for approximately 16 years. A dispute regarding payment of taxes developed between appellant and the Franchise Tax Board, which culminated with garnishment of her wages. The County complied with the garnishment order,

and appellant received paychecks reduced by the appropriate amount. Appellant simply stopped coming to work; the County granted her four months leave of absence due to illness (May 23, 1983 to September 26, 1983). Appellant, without

PAGE 4:

explanation, failed to return to work at the end of her authorized leave. On November 19, 1983, the County notified appellant of her imminent termination should she not return. On November 29, 1983, a meeting was held between representatives of the District Attorney's Office and, at appellant's request, her husband and two friends, acting as her representatives. The purpose of this meeting was to grant appellant an opportunity to respond to the November 29, 1983 letter. (The following footnote appears in the quoted opinion: This type of meeting, a Skelly hearing, is required by Skelly v. State Personnel

Board (1975) 15 Cal.3d 194, 215.] Appellant's representatives accused the County of breaching her contract of employment, arguing the County was not paying her the salary agreed upon; they also averred that the Franchise Tax Board had acted unconstitutionally as appellant had never had a hearing, and that the garnishment statutes were an unconstitutional impairment of her employment contract. The County representatives readily acknowledged appellant's right to litigate constitutional issues, but steadfastly maintained that this right did not support or require her continued, unexcused absence.

On December 30, 1983, the County sent a letter to appellant notifying her of her discharge from permanent

PAGE 5:

employment as of that date because of "excessive and unauthorized absenteeism";

pointing out that her dispute was with the Franchise Tax Board; and advising her of her right to request a hearing before the Civil Service Commission. Appellant did so and was denied a hearing. On April 2, 1984, appellant filed a petition for a writ of mandate, erroneously termed a petition for peremptory writ of administrative mandamus, seeking a Civil Service hearing regarding the cause of her dismissal. At the May 18, 1984, hearing on this petition, [appellant argued for a hearing regarding the cause of her dismissal and urged that "I've got good grounds for everything that I've done,..." However,] the court [Judge Norman L. Epstein] found that since appellant had admitted she was absent to protest her wage garnishment, the only hearing required [before the Civil Service Commission] was one limited to the appropriateness of the "degree of discipline." The court signed what it labeled an inter-

locutory judgment on June 11, 1984, and (specifically determined that other than the hearing on the "degree of discipline", appellant "received all pre-disciplinary safeguards required by due process of law, and that there was just cause to discipline ...for her unauthorized absences from duty ...." The court] issued the related peremptory

PAGE 6:

writ on August 15, 1984. On June 28, 1984, appellant petitioned this court for a writ of prohibition against the writ issued by the superior court, protesting the denial of her full evidentiary hearing. Upon our denial of her petition, she unsuccessfully sought a hearing before the California Supreme Court.

Appellant's Civil Service Commission hearing on the appropriateness of her termination was held on October 9, 1984. The

commission upheld her discharge in all respects. On March 22, 1985, appellant filed a motion to vacate the June 11, 1984 writ ordering the limited hearing. A hearing on this motion was held on May 8, 1985. Both parties presented several arguments. The court questioned the County about (1) the existence of evidence that appellant at some time had said she would return to work if the County would cease garnishing her wages; and (2) about the legality of the amount being garnished from appellant's wages. The court believed if the County could satisfactorily answer its queries in these areas, it would not vacate the June 11 writ. [] [We end our quotation from this court's opinion in Case No. B014099 at this point.]

The superior court issued an order on May 8, 1985, which this court held in its opinion (Case No. B014099) filed

on April 11, 1986, was not "tantamount to" a denial of appellant's motion to vacate. Rather, the order merely reflected "the court's desire to have some points clarified," gave "specific deadlines for the parties," and set "another hearing on the matter." This was "not a denial of appellant's motion" and was "not appealable." Accordingly, this court dismissed appellant's appeal in Case No. B014099.

Upon resumption of proceedings in superior court, appellant filed on August 20, 1986, a notice of motion "...to correct and clarify its record by declaring as final its judgment ..." and filed on September 30, 1986, a "supplement" to that motion. At a hearing held on the motion on October 27, 1986, the court ordered respondent to submit a proposed final judgment. Thereafter, appellant filed on November 2, 1986, an "Objection to

Bad-Faith Late Filing" and on November 3, filed "Petitioner's Objection to Late Filing of Frivolous Document." On November 12, 1986, in its ruling on final judgment and objections, the court (Judge Warren H. Deering) overruled the objection filed on November 2, denied the pending motion and supplement to the motion to "Correct and Clarify," ordered discharged the peremptory writ of mandate "signed on 8/15/84", and signed an order for entry of "judgment denying peremptory writ of mandate" as previously served by respondent.

PAGE 8:

CONTENTIONS

Appellant contends that the judgment is "absolutely void" and must be vacated because the minute order of November 12, 1986, is factually incorrect and because "Judge Deering was not qualified to sign a final judgment in this case," did not act in a

judicial capacity, and did not address appellant's opposition to the judgment. She further contends that the judgment is void because the "underlying 'interlocutory' judgment of June 11, 1984" is void. Appellant alleges jurisdictional defects and voidness in that judgment because (1) the superior court (Judge Epstein) would not address her motion to vacate, which attacked the wrongful assumption of jurisdiction, because the court had determined that jurisdiction had been invoked by appellant's initial petition, and (2) a defect arose "dealing with the service of notice of discharge." It is also asserted that the underlying interlocutory judgment is void because a hearing was required as to the cause of discharge, respondents should be estopped from relying on Civil Service Rule 4.03(A), Civil Service Rule 18.03 was ignored, the pretermination hearing was in effect an

"implied resignation" hearing, and the post termination hearing was summarily denied.

Appellant also challenges the constitutionality of

PAGE 9:

several statutes (Code Civ. Proc. §§ 1085, 1094.5, subds. (a), (b)) and regulations (Civil Service Rules 4.03(A), 4.03(B) and 18.03). She further challenges the constitutionality of certain judicial actions concerning the petition for writ of administrative mandamus, filed April 2, 1984, in superior court (Case No. C492725), the petition for writ of prohibition, filed June 28, 1984, before this court (Case No. B006014), the proceedings in superior court on June 10, 1985 (Case No. C492725), her prior appeal before this court, filed October 16, 1985 (Case No. B014099), and her "Motion to Clarify, etc." filed August 20, 1986, in superior court (Case No. C492725). Appellant also

alleges general "judicial misconduct" which is obstructing her "right to redress of grievance in the courts of this state" and a "miscarriage of justice" when this court dismissed her prior appeal because it was from a nonappealable order.

Finally, appellant claims that a conflict of interest existed between the superior court and the county counsel which resulted in "bias, prejudice, collusion, fraud and conspiracy," that she "reluctantly and over her objection filed a substitution of attorneys, substituting herself in as petitioner in propria persona, subject to the declaration attached to ... the substitution," and that she is entitled to an award of damages.

PAGE 10:

DISCUSSION

The gravamen of appellant's contentions appears to be that the Civil Service Commis-

sion hearing on October 9, 1984, was too narrow in its scope because it encompassed an inquiry only into the appropriateness of the degree of discipline and not the cause of appellant's discharge. This contention is without merit.

At the hearing in superior court on May 18, 1984, Judge Epstein determined that since appellant had admitted she was absent to protest her wage garnishment, the only Civil Service Commission hearing required was one limited to the appropriateness of the "degree of discipline." Appellant urged at the May 18, 1984, hearing that "I've got good grounds for everything I've done..." but has never contested that she was absent from employment for approximately three months and that she was not excused from that absence by her employer. Nor is there any indication that such a factual basis for the termination of her employment would have

been contested had the scope of the Civil Service Commission hearing been broader and encompassed an inquiry into the cause of her discharge. To the extent that appellant would have attempted to present evidence concerning alleged improprieties relating to the garnishment

PAGE 11:

of her wages, such evidence would be properly excluded as not being "relevant evidence." (Civil Service Rule 4.10(A).) Moreover, as a hearing granted by the Civil Service Commission is required to be restricted in scope to the specific issues raised in the petition which were the bases for granting the hearing (Civil Service Rule 4.03(C)), a hearing can be similarly and appropriately restricted when, as here, it has been judicially ordered. Accordingly, appellant was not denied due process in her discharge from employment. (See Titus v. Civil Service Com.

(1982) 130 Cal.App.3d 357, 362-363.)

Appellant's myriad of related remaining contentions are unavailing. The judgment and the "underlying 'interlocutory' judgment of June 11, 1984" are not void. Even assuming that during the course of this litigation, some procedural improprieties occurred as alleged by appellant, they do not rise to the level of constitutional infirmities which would invalidate the judgment. Appellant's other assertions relating to judicial misconduct, a "miscarriage of justice," the alleged voidness of the judgment, a conflict of interest, her self-representation, and the request for an award of damages are also unfounded and meritless.

PAGE 12:

The judgment is affirmed.

NOT TO BE PUBLISHED.

BOREN, J.

We concur:

FEINERMAN, P.J.

HASTINGS, J.

PAGE 13:

Los Angeles Superior Court Case No. C492725

WARREN H. DEERING, Judge

Barbara J. Branson, in pro per., for Plaintiff and Appellant.

DeWitt W. Clinton, County Counsel, and Alan K. Terakawa, Deputy County Counsel, for Defendants and Respondents,

* * *

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

ROBERT N. WILSON, CLERK

DIVISION: 5 DATE: 11/23/87

Barbara J. Branson
7131 Owensmouth Ave.
Suite D110
Canoga Park, CA 91303

Re: Branson, Barbara J.
vs.
Los Angeles County Civil Service Comm.
L.A. County Bd. of Supervisors, et al.
2 Civil B024959
Los Angeles No. C492725

THE COURT:

Petition for rehearing is denied.

* * *

SUPREME COURT
F I L E D
JAN 20 1988
Laurence P. Gill, Clerk

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 5, No. B024959
S003381

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

BRANSON

V.

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION et al.

EAGLESON, J., DID NOT PARTICIPATE.

Appellant's petition for review DENIED.

LUCAS
Chief Justice

BARBARA J. BRANSON
7131 Owensmouth Ave., #D110
Canoga Park CA 91303
No phone

Appellant
In Propria Persona

CLERK'S OFFICE
COURT OF APPEAL
SECOND DIST.
R E C E I V E D
JAN 25 1988
ROBERT N. WILSON
Clerk

ORIGINAL FILED
MAR 21 1988
COUNTY CLERK

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BARBARA J. BRANSON, Appellant	2d Civil No. B024959 LASC No. C492725
v.	NOTICE OF APPEAL
LOS ANGELES COUNTY CIVIL SERVICE COMMISSION et al., Respondents	[28 U.S.C.§2101(d)] [USSC Rules 10, 11]

PLEASE TAKE NOTICE that appellant BARBARA J. BRANSON appeals to the United States Supreme Court, pursuant to Title 28 U.S.C. §1257(2) from the decision filed October 26, 1987, which is the final order of the Calif-

ornia Court of Appeal, the highest State court in which a decision in the State appellate process could be had, affirming the judgment of the Los Angeles Superior Court filed November 12, 1986.

Appellant timely filed a Petition for Review with the California Supreme Court, which petition was summarily denied January 20, 1988.

Dated: January 25, 1988

BARBARA J. BRANSON
Appellant
In Propria Persona

* * *

CONSTITUTIONAL AND STATUTORY PROVISIONS

(Relevant portions)

No person shall...be deprived of life, liberty, or property, without due process of law; ....

Fifth Amendment, U.S. Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment, Sec. 1, U.S. Const.

In cases of discharge or reduction of a permanent employee other than a probationary employee covered by the provisions of Rule 18, or suspension in excess of five days, a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as provided in Rule 18.02. The petition shall be denied if such facts and reasons are not stated.

Los Angeles County Civil Service Rule 4.03(a)

In all other cases provided for in Rule 4.01, the commission may, at its discretion, grant a hearing or make its decision on the merits based on a review of written materials submitted by the parties concerned. The commission shall deny both a request for a hearing and a review of written materials if the petition fails to state sufficient specific facts and reasons, or if, in the opinion of

the commission, the specific facts and reasons stated, if true, would not entitle the petitioner to any relief. Moreover, no hearing need be granted if the commission is of the opinion, based on the moving papers and any responses thereto, that the petitioner is not likely to prevail on the merits of the petition. No amended petition need be considered if it is not filed within 10 business days of the denial of the original petition. No more than one amended petition may be filed.

Los Angeles County Civil Service Rule 4.03(b)

Hearing on Reasons for Discharge or Reduction. If the permanent employee to be discharged or reduced pursuant to Rule 18.02 so requests, the Commission shall proceed in accordance with Rule 4.06. A public hearing pursuant to Rule 4 shall be held by the Commission or by the Hearing Board.

Los Angeles County Civil Service Rule 18.03